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09/961,419	09/25/2001	Richard M. Ratliff	023895/259077	6914
826 7590 06/04/2007 ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			EXAMINER AGWUMEZIE, CHARLES C	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

09/961,419

Applicant(s)

RATLIFF ET AL.

Examiner

Charlie C. Agwumezie

Art Unit

3621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14, 16, 17, 19-24, 26, 27, 29-82 and 84-90 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14, 16-17, 19-24, 26-27, 29-82, and 84-90 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/8/02, 5/28/04</u> | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 12, 2007 has been entered.

### **Status of Claims**

2. Claims 15, 18, 25, 28, and 83 have been cancelled.

Claims 1, 5-9, 11, 16-17, 21, 26-27, 31, 35-38, 41, 46-47, 49, 54-56, 59, 60, 63, 68-71, 74-75, 78, and 85-86, are amended.

Claims 1-14, 16-17, 19-24, 26-27, 29-82, and 84-90 are pending in this application per the request for continued examination filed on March 12, 2007

### ***Response to Arguments***

3. Applicant's arguments filed March 12, 2007 have been fully considered but they are not persuasive.

With respect to claims 1, 31, 41, 49 and 59, Applicant argues that Boushy only uses availability to determine an initial bid price but does not otherwise disclose that the availability is modified to provide a more competitive price.

In response, Examiner respectfully disagrees with Applicant's characterization of Boushy's invention and submits that Boushy does teach that the availability of the resource at one of the plurality of predefined price level is modified in order to produce a more competitive price. Boushy discloses that room prices vary based on several factors including availability. That operators forecast number of rooms in demand for future dates, and set room prices (i.e. predefine prices) based on these factors. That room prices are further adjusted based on competitive market conditions.

As per claims 21 and 74, Applicant argues that neither Goodwin nor Boushy discloses combining a price and a non-monetary incentive to produce the more competitive position, modifying a price based on the level of service provided to produce the more competitive position, or marking up the at least one entry while maintaining a competitive position.

In response, Examiner disagrees and submits that Boushy as conceded by the Applicant does disclose that the adjusted bid price may be increased (marked up) if the adjusted bid price is reduced below a minimum room price. Boushy further discloses adjusting prices based on indirect value (incentive). The offer prices are based on indirect value such as increased casino profits to offset the discounted room prices. Thus Boushy does disclose the claimed limitation as shown in the rejections below.

Applicant further argues that independent claims 1, 11, 21, 31, 41, 49, 59 and 74 are distinguishable from the cited references taken alone or in combination. Because each of the dependent claims includes each of the limitations of the respective independent claims, dependent claims are allowable for at least those reasons.

In response, Examiner disagrees and submits that neither the independent claims nor the dependent claims are allowable over the references of records and are properly rejected as shown below.

#### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

**Claims 1, 11, 31, 41, 49, and 59**, are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time of application was filed, had possession of the claimed invention.

The specification as originally filed contains no support for **“increasing availability...entry at a predefined price level having more competitive price”** (claims 1, 11, 31, 41, 49 and 59) This is the first instance of this invention that is

Art Unit: 3621

unrelated and unsupported by the original filing. Therefore **Cancellation of the new matter is required.**

Applicants amendments/arguments dated March 12, 2007 have been considered but are deemed without merit since the Applicant argues an invention lacking support in the specification and based entirely on new matter.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-6, 8-14, 16, 19-24, 26, 29-36, 38-68, 70, 73-75, 77-82, 84, and 88-90,**

are rejected under 35 U.S.C. 103(a) as being unpatentable over Goodwin III et al

European Patent Application Publication No. EP 0 973 112 A2 in view of Boushy et al

U.S. Patent No. 6,993,494 B1

As per **claims 1, 11, 31, and 59,** Goodwin et al discloses a method for providing price information for an item capable of being sold at a plurality of different predefined price levels that each have a respective availability associated therewith, comprising the steps of:

receiving a request for price information associated with at least one item (figs. 4 and 5; ...obtains competitive price data...);

obtaining database results from a database responsive to the request (0034; 0044; ...reads the price of the item from competitive price data file...);

modifying at least one entry in the database results to reflect a more competitive price when compared to another entry in the database results (see figs. 4 and 5; 0032; ...control software determines whether the PLU price should be adjusted for the item...) comprising increasing availability of the at least one entry at a predefined price level having the more competitive price and

providing the database results to a consumer after completing the modifying step (figs. 4 and 5; 0032; 0044).

What Goodwin does not explicitly disclose is increasing availability of the at least one item entry at a predefined price level having the more competitive price. Goodwin however discloses that the price adjustment is based on predetermined rules and/or competitive market conditions.

Boushy et al discloses a method comprising increasing availability of the at least one item entry at a predefined price level having the more competitive price (fig. 2B; col. 7, lines 60-67; col. 8, lines 35-40; col. 10, lines 15-50; ...room prices vary based on several factors including availability...forecast number of rooms in demand for future dates, and set room prices based on these factors...).

Accordingly it would have been obvious to one of ordinary skill in the art at time of applicant's invention to modify the method of Goodwin et al and incorporate the

method comprising increasing availability of the at least one item entry at a predefined price level having the more competitive price in view of the teachings of Boushy et al in order to remain competitive and/or if the demand for the item is strong.

As per claims 2, 12, 22, 32, 67 and 82, Goodwin further discloses the method, wherein the at least one entry is modified in real time (0032).

As per claims 3, 13, 23, and 33, Goodwin et al further discloses the method, wherein the at least one entry is modified based on recently obtained information stored in cache (0032).

As per claims 4, 14, 24, and 34, Goodwin et al further discloses the method, wherein the at least one entry is modified based on information obtained through a batch process (fig. 3).

As per claims 5, 35, and 68, Goodwin et al failed to explicitly disclose the method, wherein at least one entry is modified by combining a price and a non-monetary incentive to produce a more competitive price.

Boushy et al discloses the method, wherein the database results are modified by combining a price and a non-monetary incentive to produce the more competitive price (0032; ....discounted room prices in order to attract customers...for increased casino profits...;...indirect value...).



Accordingly it would have been obvious to one of ordinary skill in the art at time of applicant's invention to modify the method of Goodwin et al and incorporate the method wherein the database results are modified by combining a price and a non-monetary incentive to produce the more competitive price in view of the teachings of Boushy et al in order to attract customers.

As per claims 6, 16, 26, 36, 69, and 84, Goodwin et al further discloses the method, wherein at least one entry is modified using at least one of increasing the price, decreasing the price, and modifying the price, based on a level of service provided, to produce the more competitive price (0039; 0045).

As per claims 8, and 38, Goodwin et al further discloses the method, wherein at least one entry is modified by marking up the at least one entry, while maintaining a competitive price (0039).

As per claims 9, 19, 29, and 39, Goodwin et al further discloses the method, wherein at least one entry is modified by submitting in real time a second request to a second database and receiving information to produce the more competitive price (figs. 4 and 5).

As per claims 10, 20, 30, and 40, Goodwin et al further discloses the method,

wherein the received information from the second database is based on information received with the second request (see figs. 4 and 5).

As per claim 21 and 74, Goodwin et al discloses a method for providing information, comprising:

receiving a request for information associated with at least one item (figs. 4 and 5; ...obtains competitive price data...);

obtaining database results from a database responsive to the request (0034; 0044; ...reads the price of the item from competitive price data file...);

modifying at least one entry in the database results to reflect a more competitive price when compared to another entry in the database results (see figs. 4 and 5; 0032; ...control software determines whether the PLU price should be adjusted for the item...) based at least partially on combining a price and a non-monetary incentive to produce the more competitive position, modifying a price based on the level of service provided to produce the more competitive position, or marking up the at least one entry while maintaining a competitive position and

providing the database results to a consumer after completing the modifying step (figs. 4 and 5; 0032; 0044).

What Goodwin does not explicitly disclose is based at least partially on combining a price and a non-monetary incentive to produce the more competitive position, modifying a price based on the level of service provided to produce the more

competitive position, or marking up the at least one entry while maintaining a competitive position

Boushy et al discloses a method modifying based at least partially on combining a price and a non-monetary incentive to produce the more competitive position, modifying a price based on the level of service provided to produce the more competitive position, or marking up the at least one entry while maintaining a competitive position (fig. 2B; col. 7, lines 30-67; ...offer price based on indirect value... col. 8, lines 35-40; col. 10, lines 15-50; ...room prices vary based on several factors including availability...increased casino profits to offset the discounted room prices...;).

Accordingly it would have been obvious to one of ordinary skill in the art at time of applicant's invention to modify the method of Goodwin et al and incorporate the method of modifying based at least partially on combining a price and a non-monetary incentive to produce the more competitive position, modifying a price based on the level of service provided to produce the more competitive position, or marking up the at least one entry while maintaining a competitive position in view of the teachings of Boushy et al in order to remain competitive and/or attract more customers.

As per **claims 41, and 49**, Goodwin et al discloses a network node that provides information for an item capable of being sold at a plurality of different predefined price levels that each have a respective availability associated therewith, comprising:

a receiving device for receiving a request for information associated with an item (figs. 1, 4 and 5);

a database, accessible by the device, that provides results responsive to the request (fig. 1; 0034; 0044);

a rule processor that modifies at least one entry in the results to reflect a more competitive position when compared to another entry in the results (see figs. 4 and 5; 0032; 0044) comprising increasing availability of the at least one entry at a predefined price level having the more competitive price prior to providing the result to a consumer.

What Goodwin does not explicitly disclose is comprising increasing availability of the at least one entry at a predefined price level having the more competitive price prior to providing the result to a consumer. Goodwin however discloses that the price adjustment is based on predetermined rules and/or competitive market conditions.

Boushy et al discloses a method comprising increasing availability of the at least one entry at a predefined price level having the more competitive price prior to providing the result to a consumer (fig. 2B; col. 7, lines 60-67; col. 8, lines 35-40; col. 10, lines 15-50; ...room prices vary based on several factors including availability...forecast number of rooms in demand for future dates, and set room prices based on these factors...).

Accordingly it would have been obvious to one of ordinary skill in the art at time of applicant's invention to modify the method of Goodwin et al and incorporate the method comprising increasing availability of the at least one item entry at a predefined price level having the more competitive price in view of the teachings of Boushy et al in order to remain competitive and/or if the demand for the item is strong.

As per **claims 42, and 50**, Goodwin et al further discloses the network node,

wherein the rule processor modifies the at least one entry in real time (0032).

As per **claims 43, and 51**, Goodwin et al further discloses the network node, wherein the rule processor modifies the at least one entry based on recently obtained and stored information (0032).

As per **claims 44, and 52**, Goodwin et al further discloses the network node, wherein the rule processor modifies the at least one entry based on information obtained through a batch process (fig. 3).

As per **claims 45, and 53**, Goodwin et al failed to explicitly disclose the network node, wherein the rule processor modifies the at least one entry by combining a price and a non-monetary incentive to produce the more competitive position.

Boushy et al discloses the method, wherein the database results are modified by combining a price and a non-monetary incentive to produce the more competitive price (0032; ....discounted room prices in order to attract customers...for increased casino profits...;...indirect value...).

Accordingly it would have been obvious to one of ordinary skill in the art at time of applicant's invention to modify the method of Goodwin et al and incorporate the method wherein the database results are modified by combining a price and a non-monetary incentive to produce the more competitive price in view of the teachings of Boushy et al in order to attract customers.

As per **claims 46, and 54**, Goodwin et al further discloses the network node, wherein the rule processor modifies the at least one entry by using at least one of increasing a price, decreasing the price, and modifying the price, based on a level of service provided, to produce a more competitive position (0039; 0045).

As per **claims 48, and 56**, Goodwin et al further discloses the network node, wherein the rule processor is located in a second network node and modifying the at least one entry comprises submitting in real time the request to the rule processor and receiving information with the more competitive position (0039).

As per **claim 57**, Goodwin et al further discloses the system, wherein the means for modifying the at least one entry modifies the at least one entry by submitting in real time a second request to a second database and receiving information to produce the more competitive position (see figs. 4 and 5).

As per **claim 58**, Goodwin et al further discloses the system, wherein the received information from the second database is based on information received with the second request (see figs. 4 and 5).

As per **claims 60 and 75**, Goodwin et al further discloses the method, wherein modifying the at least one entry includes providing the at least one entry at cost to

reflect a more competitive position (0039).

As per **claims 62 and 77**, Goodwin et al further discloses the method, wherein modifying the at least one entry includes providing the more competitive position for the at least one entry in exchange for a non-monetary incentive (fig. 5).

As per **claims 63 and 78**, Goodwin et al further discloses the method, wherein modifying the at least one entry includes applying a set of supplier rules to the at least one entry to determine a price associated with the at least one entry (figs. 4 and 5).

As per **claims 64 and 79**, Goodwin et al further discloses the method, wherein applying the set of supplier rules includes increasing the price associated with the at least one entry to match at least one of the other entries in the results (figs. 4 and 5).

As per **claims 65 and 80**, Goodwin et al further discloses the method, wherein applying the set of supplier rules includes providing the more competitive position, while maintaining a minimum price for the at least one entry (see figs. 4 and 5).

As per **claims 66 and 81**, Goodwin et al further discloses the method, wherein applying the set of supplier rules includes providing the more competitive position, while maintaining a premium value above at least one of the other entries in the results (see figs. 4 and 5).

As per claim 73, Goodwin et al further discloses the method, wherein marking up the at least one entry above the supplier provided price includes marking up the supplier provided price to be one of equal and less than other entries in the results (figs. 4 and 5; 0039).

As per claim 88, Goodwin et al further discloses the network node, wherein the means for modifying the at least one entry marks up the at least one entry by increasing the supplier provided price to be one of equal and less than other entries in the results (0039).

As per claims 89 and 90, Goodwin et al failed to explicitly disclose the method wherein the database entries for the at least one item at a plurality of prices, and wherein modifying at least one entry in the database comprises making the at least one item that was previously available at the less competitive price to be available at the more competitive price

Boushy et al discloses the method wherein the database entries for the at least one item at a plurality of prices, and wherein modifying at least one entry in the database comprises making the at least one item that was previously available at the less competitive price to be available at the more competitive price (col. 8, lines 35-40).

Accordingly it would have been obvious to one of ordinary skill in the art at time of applicant's invention to modify the method of Goodwin et al and incorporate the



Art Unit: 3621

method wherein the database entries for the at least one item at a plurality of prices, and wherein modifying at least one entry in the database comprises making the at least one item that was previously available at the less competitive price to be available at the more competitive price in view of the teachings of Boushy et al in order to remain competitive.

Claims 7, 17, 27, 37, 47, 55, 69, and 85, are rejected under 35 U.S.C. 103(a) as being unpatentable over Goodwin III et al European Patent Application Publication No. EP 0 973 112 A2 in view of Boushy et al U.S. Patent No. 6,993,494 B1 and further in view of Walker et al U.S. Patent No. 6,553,346 B1.

As per claims 7, 17, 27, 37, 47, 55, 69, and 85, both Goodwin et al and Boushy et al failed to explicitly disclose the method, wherein the database results are modified by changing the availability of a class fare to produce the more competitive price.

Walker et al discloses the method, wherein the database results are modified by changing the availability of a class fare to produce the more competitive price (see fig. 7, 9 and 11; col. 5, lines 5-25).

Accordingly it would have been obvious to one of ordinary skill in the art at time of applicant's invention to modify the method of Goodwin et al and incorporate the method wherein the database results are modified by changing the availability of a class fare to produce the more competitive price in view of the teachings of Walker et al in order to remain competitive.

5. Claims 71, 72, 76, 85 86, and 87, are rejected under 35 U.S.C. 103(a) as being unpatentable over Goodwin III et al European Patent Application Publication No. EP 0 973 112 A2 in view of Boushy et al U.S. Patent No. 6,993,494 B1 and further in view of Examiner's Official Notice.

As per claims 71, 72, 76, 86 and 87, Goodwin et al failed to explicitly disclose a method wherein modifying the at least one entry further comprises sharing revenue derived from a sale of the at least one entry between an agent and a supplier of the item.

Goodwin however is directed to a method of managing competitive price information which are higher than competitive prices and dynamically changing or modifying the prices to obtain a competitive pricing. The idea of airline/Agent relationship and revenue sharing is old, conventional and notoriously well known in the industry.

Accordingly it would have been obvious to one of ordinary skill in the art at time of applicant's invention to modify the method of Goodwin et al and incorporate the method wherein modifying the at least one entry further comprises sharing revenue derived from a sale of the at least one entry between an agent and a supplier of the item as commonly practiced in the industry.

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The reference cited to Beaton et al U.S. Patent No. 6,292,786 is a document considered relevant to the claimed invention.

**Examiner's Note:** Examiner has cited particular columns and line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that the applicant, in preparing the responses, fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles C. Agwumezie whose number is **(571) 272-6838**. The examiner can normally be reached on Monday – Friday 8:00 am – 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Fischer can be reached on **(571) 272 – 6779**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you

Art Unit: 3621

have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



**Charlie Lion Agwumezie**  
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**Acc**  
**May 15, 2007**



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